

FOR COUNTY USE ONLY

E	New	Vendor Code		Dept.	Contract Number	
M	<input checked="" type="checkbox"/> Change					
X	Cancel			RNT	90-383 A-2	
County Department				Dept.	Orgn.	Contractor's License No.
Real Estate Services Department				RNT	RNT	
County Department Contract Representative				Ph. Ext.	Amount of Contract	
John Yuhas, Property Manager				7-2767		
Fund AAA	Dept. RNT	Organization RNT	Appr. 200	Obj/Rev Source 2905	Activity	GRC/PROJ/JOB Number 57N30737
Commodity Code			Estimated Payment Total by Fiscal Year			
			FY	Amount	I/D	FY Amount
Project Name						
BARSTOW- SSG/DCS						
170 N. Yucca						

SECOND AMENDMENT

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name

San Bernardino County Central Credit Union/Marine Corps
West Credit Union, a California General Partnership

hereinafter called LANDLORD

Address

Post Office Box 735

San Bernardino, CA 92402

Phone

Birth Date

(909) 881-3355

Federal ID No. or Social Security No.

95-2508873

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WHEREAS, the COUNTY and LANDLORD have previously entered into a Lease Agreement, Contract No. 90-383, wherein LANDLORD agreed to lease certain property to the COUNTY; and,

WHEREAS, the COUNTY and LANDLORD now desire to amend the Lease Agreement to increase the initial term, increase the square footage, modify the rent and do improvements; and

NOW, THEREFORE, in consideration of mutual covenants and conditions, the parties hereto agree the Lease Agreement, Contract No. 90-383, is amended as follows:

1. **DELETE** existing Paragraph 2, PREMISES LEASED, in its entirety.
2. **ADD** a new Paragraph 2, PREMISES LEASED, which shall read as follows:

2. **PREMISES LEASED:** Landlord leases to COUNTY and COUNTY leases from LANDLORD 5,421 square feet of the real property building and other improvements, including forty five (45) unassigned parking spaces, located at 170 North Yucca Street ("Premises") as described in Exhibit "A" and "C" including plans and specifications.

3. The initial term of this lease is increased for an additional period of approximately three (3) years and will end on May 31, 2002. (Note: COUNTY still retains its original three (3) two-year options).

4. **ADD** to paragraph 4, RENT, the following schedule:

Beginning June 1, 1997, until completion of tenant improvements by LANDLORD as set forth in this amendment, Paragraph 37, LANDLORD'S IMPROVEMENTS, rent shall be Three Thousand Four Hundred and Fifty Eight and 00/100 Dollars (\$3,458.00), (\$.91 per square foot). Upon completion of the tenant improvement, monthly payments shall be Six Thousand Five Hundred and Five and 00/100 Dollars (\$6,505.00), (\$1.20 per square foot) until May 31, 2000.

June 1, 2000 thru May 31, 2001, \$6,621.00 (\$1.22 per square foot).

June 1, 2001 thru May 31, 2002, \$6,740.00 (\$1.24 per square foot).

5. **UNDER** Paragraph 5, EXPANSION OF RENTAL SPACE – RIGHT OF FIRST REFUSAL, **DELETE** Exhibit "A", page 3 and **SUBSTITUTE** therefore the attached as a new Exhibit "A" page 3.

6. **DELETE** existing subparagraph 6a(1) and **SUBSTITUTE** therefore the following as a new subparagraph 6a(1):

6a(1). The negotiations and any dispute resolution method used will be guided by the fact that the monthly rent in Paragraph 4, RENT, includes amounts for basic rent for office space and payment for building improvements made by LANDLORD under Paragraph 37, LANDLORD'S IMPROVEMENTS. The basic rental rate for office space starts at One and 07/100 Dollars (\$1.07) per square foot per month for the first twelve (12) months of the initial term and with annual increases for two percent (2%), will increase to One and 11/100 Dollars (\$1.11) per square foot per month during the last twelve (12) months of the initial term. The amount for payment of LANDLORD improvements start and will remain at Thirteen Cents (\$.13) per square foot per month throughout the initial term. All LANDLORD improvements, including those improvements made to any expansion space added to this lease during the initial term, will have been paid for within the initial term and no further payment for these improvements will be made by COUNTY. The negotiated/arbitrated rent shall be based upon the basic rental rate above and shall not include any rental amount for the LANDLORD's improvements.

7. **ADD** the following subparagraphs (7, 8, 9, and 10) to Paragraph 13, MAINTENANCE and **ADD** the attached as a new Exhibit "B":

(7) Air conditioner, heating and ventilating systems the Premises (additionally, air conditioning and heating filters) are to be changed quarterly; and,

(8) The servicing of fire extinguishers or any other fire suppression equipment attached to the facility.

(9) Interior maintenance and janitorial service. Janitorial services must be performed in a workman-like manner by a licensed and qualified independent janitorial contractor, and are to include, but are not limited to the items set forth in Exhibit "B", Janitorial Services. LANDLORD shall perform interior maintenance and janitorial services at a time and in a manner that will cause the least possible inconvenience, annoyance, or disturbance to COUNTY; and,

(10) LANDLORD must hire a qualified property manager to manage the Premises. All property management services, not limited to all maintenance and repair, must be performed pursuant to a property management agreement. The Premises must be inspected by the Property Manager at least every other week, beginning the second week after the commencement date, and daily by the janitorial staff, to ensure the Premises are maintained properly. Inspections must be coordinated with the COUNTY representative. The COUNTY has the right to review the selection of the Property Manager and to review the agreement with the manager.

8. **DELETE** the existing subparagraphs 13. b and c to Paragraph 13, MAINTENANCE, and substitute the following as new subparagraphs 13. b and c to Paragraph 13, MAINTENANCE:

b. LANDLORD at its cost shall repair the Premises if they are damaged or in any way unsafe.

c. LANDLORD shall have ten (10) days to perform its obligation to repair under this paragraph, except that LANDLORD shall perform its obligations immediately if the nature of the problem presents an unsafe condition or emergency. Provided, however, if the nature and/or extent of LANDLORD's obligation is such that more than ten (10) days are reasonably required to complete, then LANDLORD shall not be in default if LANDLORD commences its obligation within said ten (10) day period and thereafter diligently prosecutes its obligation to completion. If LANDLORD does not perform its obligations within the time limitations in this paragraph, COUNTY after notice to LANDLORD can perform the obligations and have the right to be reimbursed for the sum it actually and reasonably expends (including charges for COUNTY employees and equipment) in the performance of LANDLORD's obligations. COUNTY shall have the right to reimbursement by either billing LANDLORD (or at COUNTY's sole option), by withholding from future rent due the sum COUNTY has expended until COUNTY is reimbursed in full. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld. Without in any way affecting LANDLORD's duty to inspect, maintain and repair the Premises regardless of whether any specific notice of need for maintenance or repair is provided to LANDLORD by the COUNTY, the COUNTY may request specific maintenance or repairs. Any such request may be made orally, by telephone or otherwise.

9. **DELETE** existing Paragraph 17, HOLD HARMLESS, and **ADD** the new Paragraph 17, HOLD HARMLESS that reads as follows:

17. **HOLD HARMLESS:**

A. The TENANT agrees to indemnify, defend and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim therefore, except where such indemnification is prohibited by law.

B. The COUNTY agrees to indemnify and hold harmless the TENANT, and its officers, employees, agents and volunteers from any and all liabilities for injury to persons and damage to property arising out of any negligent acts or omissions of the COUNTY, its officers, employees, agents, or volunteers in connection with this contract.

C. In the event the COUNTY and/or the TENANT is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the lease, the COUNTY and/or TENANT shall indemnify the other to the extent of its comparative fault.

D. Furthermore, if the COUNTY or TENANT attempts to seek recovery from the other for Workers Compensation benefits paid to an employee, the COUNTY and TENANT agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

10. **DELETE** the existing Paragraph 18, INSURANCE and **ADD** the new Paragraph 18, INSURANCE, that reads as follows:

18. **INSURANCE:**

a. COUNTY is a public entity and is self-insured.

b. Without in any way affecting the indemnity herein provided and in addition thereto, the LANDLORD shall secure and maintain throughout the lease the following types of insurance with limits as shown:

(1) Workers' Compensation: A program of Workers' Compensation insurance or a state-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) limits, covering all persons providing services on behalf of the LANDLORD and all risks to such persons under this agreement.

(2) Comprehensive General and Automobile Liability Insurance: This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than One Million and 00/100 Dollars (\$1,000,000.00).

(3) Fire Insurance: Standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements to the extent of at least forty percent (40%) of the full replacement value of the Premises.

c. Additional Named Insured: All policies, except for Workers' Compensation, shall contain additional endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of this agreement.

d. Waiver of Subrogation Rights: LANDLORD shall require the carriers of the above required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors.

e. Policies Primary and Non-Contributory: All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

f. Proof of Coverage: LANDLORD shall immediately furnish certificates of insurance to COUNTY, evidencing the insurance coverage, including endorsements, above required prior to occupying the Premises and the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the COUNTY, and LANDLORD shall maintain such insurance from the time of occupancy and commencement of performance of services hereunder until the completion of such occupancy. Within sixty (60) days of the commencement of this agreement, the LANDLORD shall furnish certified copies of the policies and all endorsements.

g. Insurance Review: The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk. Any such reduction or waiver for the entire term of the agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this agreement. LANDLORD agrees to execute any such amendment within thirty (30) days of receipt.

h. Failure to Have Insurance: In the event COUNTY receives a notice of cancellation concerning any of the required policies, or should LANDLORD fail to have in effect the required coverage at any time during this lease, COUNTY may give notice to LANDLORD to immediately suspend all LANDLORD

activities and/or notice to reinstate or acquire the affected coverage. Should LANDLORD fail to reinstate or acquire the affected coverage within ten (10) days of COUNTY's notice to reinstate or acquire such coverage, COUNTY may either terminate this lease, reinstate or acquire the affected coverage, and LANDLORD shall reimburse COUNTY for the necessary cost at COUNTY's option. If LANDLORD does not reimburse COUNTY within ten (10) days after demand by COUNTY, COUNTY shall have the right to withhold from future amounts due under this lease or otherwise due to LANDLORD the sum COUNTY has expended until COUNTY is reimbursed in full.

payments under this paragraph shall commence on the date after the date of termination when the next monthly rent would have been due, and shall continue until the total amount is paid in full. No interest or service charge shall be added to the total amount due.

15. **DELETE** existing Paragraph 37, LANDLORDS IMPROVEMENTS and **ADD** the new Paragraph 37, LANDLORDS IMPROVEMENTS to read as follows and **ADD** the attached as a new Exhibit "C":

37. **LANDLORD'S IMPROVEMENTS:**

a. LANDLORD, at its cost, agrees to make the improvements to the Premises set forth in Exhibit "C", Premises Specifications. LANDLORD shall provide COUNTY receipts, invoices and other billing and/or accounting information necessary to verify the cost of all improvements. The costs of all improvements made by LANDLORD pursuant to this paragraph shall be amortized over the remaining portion of the initial term of this lease regardless of the actual completion date of the improvements. The costs of all improvements made to any expansion space shall be amortized over that portion of the initial term remaining when the expansion space is added to this lease. The monthly rent, as set out in Paragraph 4, RENT, shall be deemed to include a proportionate share of the amortized cost of the improvements.

b. LANDLORD understands and agrees that from the time that this agreement is executed through the completion of the improvements pursuant to Exhibit "C", Premises Specifications, and acceptance of the improved Premises by COUNTY, LANDLORD shall not assign or transfer a controlling interest in the Premises to a third party, without COUNTY's prior review and approval.

(1) LANDLORD understands and agrees to provide to COUNTY all documents and relevant information concerning any proposed transfer. COUNTY will have ten (10) COUNTY working days after receiving all such documents and information to complete its review. Upon COUNTY approval of an assignment or transfer, the parties shall immediately execute an amendment to this lease stating the change of ownership of the Premises.

c. LANDLORD understands and agrees not to make any modifications to the improvement plans and specifications as set forth in Exhibit "C", Premises Specifications, without first obtaining approval in the form of an amendment to this Lease. Any changes to these plans and specifications, without first acquiring said approval, will be at the expense of the LANDLORD and not the COUNTY.

d. In the event LANDLORD contracts for the construction of any portion of the improvements set forth in Exhibit "C", Premises Specifications, LANDLORD shall comply with the applicable portions of Labor Code Section 1720.2 and 1770 et seq. regarding general prevailing wages.

e. LANDLORD shall have all improvements completed and ready for occupancy by no later than May 1, 1999.

16. **ADD** to Paragraph 25, NOTICES, the following subparagraph that will read as follows:

b. If, at any time after the COUNTY accepts the Premises, the LANDLORD assigns or transfers a non-controlling interest of its rights in the Premises to a third party, LANDLORD must notify COUNTY of its action at least fifteen (15) COUNTY working days prior to completing any such action.

c. If, at any time after the COUNTY accepts the Premises, the LANDLORD assigns or transfers a controlling interest of its rights in the Premises to a third party, LANDLORD must notify COUNTY of its action at least fifteen (15) COUNTY working days prior to completing any such action. The new owner must provide COUNTY with evidence of completion of such action. The parties shall immediately execute an amendment to this lease stating the change of ownership of the Premises.

(1) Within fifteen (15) COUNTY working days of completing any action which affects a change in the ownership of the Premises, the new owner must provide COUNTY evidence of obtaining insurance in compliance with Paragraph 18, INSURANCE.

17. ADD Paragraph 47, INTERPRETATIONS, that will read as follows:

47. **INTERPRETATIONS:** As this agreement was jointly prepared by both parties, the language in all parts of this agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

All other provisions and terms of the Lease Agreement, Contract No. 90-383, as previously amended, shall remain the same and are hereby incorporated by reference.

END OF SECOND AMENDMENT.

* * * * *

* * * * *

COUNTY OF SAN BERNARDINO

Chairman, Board of Supervisors

Dated _____

(State if corporation, company, etc.)

By _____
(Authorized Signature)

Dated _____

Titl
e _____

Address _____

By _____
Deputy

Approved as to Legal Form

County Counsel

Date _____

Reviewed as to Affirmative Action

Date _____

Reviewed for Processing

Agency Administrator/CAO

Date _____